

In the Matter of Anna Marie Clark, et al., Newark Housing Authority
CSC Docket No. 2010-661
OAL Docket No. CSV 13507-09
(Civil Service Commission, decided April 18, 2011)

The appeals of Anna Marie Clark and Lugene Sherman, former Senior Clerk Typists, Gwendolyn Bethea, a former Clerk Typist, and Sheila Everett, a former Supervising Clerk Typist,¹ with the Newark Housing Authority (Housing Authority), of their layoffs, effective October 19, 2009, were heard by Administrative Law Judge JoAnn Lasala Candido (ALJ), who rendered her initial decision on February 17, 2012. Exceptions were filed on behalf of the appointing authority and cross-exceptions were filed on behalf of the appellants.²

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on April 18, 2012, accepted and adopted the ALJ's Findings of Fact and Conclusions as contained in the initial decision and the recommendation to reverse the layoffs.

DISCUSSION

On July 21, 2009, the Housing Authority submitted a layoff plan to the Division of State and Local Operations (SLO), indicating that for reasons of economy and efficiency, combined with the need to approve its delivery of services, it would lay off 11 employees. Although the Housing Authority has not been a Civil Service jurisdiction since May 27, 1997, SLO noted that many employees retained Civil Service status for several categories of transactions, such as disciplinary and layoff actions. Since the Housing Authority's letters of separation that it included with the layoff plan substantially complied with the provisions of *N.J.A.C. 4A:8-1.4*, SLO approved the layoff plan on September 3, 2009. Title rights determination letters were issued to the impacted employees on October 8, 2009 and the appellants were advised that they did not have any displacement rights, but would be placed on applicable special reemployment lists. Upon the appellants' appeals of

¹ It is noted that on April 6, 2011, the Commission granted the Division of State and Local Operations' request to consolidate various local government titles within the clerical occupations group and rename the titles to more appropriately represent the type of work performed by the incumbents. As a result, the Clerk Typist, Senior Clerk Typist, and Supervising Clerk Typist titles were renamed Keyboarding Clerk 1, Keyboarding Clerk 2, and Keyboarding Clerk 4. The appellants' County and Municipal Personnel System (CAMPS) records indicate the appellants' titles are recorded at the appropriate level in the Keyboarding Clerk title series.

² Another employee, Nancy Jackson, also appealed the good faith of her layoff. However, Jackson withdrew her appeal.

the good faith of their layoffs to the Commission, the matters were transmitted to the Office of Administrative Law for hearings as contested cases and were then consolidated.

In the initial decision, the ALJ set forth the testimony of the appellants, as well as the testimony of Janet Abrahams, the Housing Authority's Chief of Operations, Sibyl Bryant, the Housing Authority's Chief Human Resources Officer, and Caroline Murray, a manager with the Housing Authority. At the time of the appellants' layoffs, the Housing Authority created two new titles, occupancy specialist and customer care specialist, and the Clerk Typists impacted by the layoff were advised that they could apply for the new positions being created. The ALJ emphasized that as part of its layoff plan, the Housing Authority eliminated 17 employees holding the Clerk, Clerk Typist, Senior Clerk Typist, and Supervising Clerk Typist positions, 12 of whom were entitled to Civil Service protection. However, the Housing Authority then went on to hire 22 customer care specialists and at least 10 occupancy specialists. Further, the ALJ found that there was sufficient evidence to give rise to a reasonable inference of ill motive in the layoff, in that the Housing Authority pursued the layoff action to strip its employees of Civil Service protection. In this regard, she noted that Abrahams admitted that she had created several new positions since she was hired in 2006 with the effect that employees who had Civil Service rights under the old titles did not keep those rights under the newly created titles and that she could have changed the Clerk Typist positions to include job duties included in the customer care specialist positions.

The ALJ also rejected the Housing Authority's contention that the layoffs and job title changes were necessary in order for it to comply with a federal Housing and Urban Development (HUD) directive for housing authorities to convert to an asset-based management system. In this regard, she noted that the Housing Authority proffered no contention that the layoff was part of a plan to reduce payroll costs nor did it introduce evidence indicating that a cost-benefit analysis was conducted to determine the usefulness of the layoff. Rather, although 17 positions in the Clerk Typist title series were eliminated, 22 customer care specialists and at least 10 occupancy specialists were hired. Further, a comparison of the duties actually performed by the Senior Clerk Typists and those performed by customer care specialists indicated that the positions were substantially the same. Therefore, since the Housing Authority did not demonstrate a legitimate purpose for pursuing the layoffs, the ALJ concluded that it acted in bad faith and recommended that the layoffs be reversed.

In its exceptions to the initial decision, the Housing Authority contends that the ALJ did not give it any presumption of good faith in the conduct of its layoff. It also states that it was mandated by HUD to convert to an asset-based management system, and, in order to comply with that directive, was required to reorganize its field operations. This resulted in a complete restructuring of its various field offices

which required a complete revision of the respective office positions to reflect new duties and responsibilities of the staff and the agency. The Housing Authority also states that it contracted with an outside Housing Consultant, MD Strum, to provide extensive training that was necessary to prepare and qualify staff for the transition and that it advised the employees impacted by the layoff that they would have to apply and qualify for the newly created positions. After providing this training, the Housing Authority conducted interviews with all interested employees but appellants Bethea, Clark, and Sherman were deemed unqualified and Everett refused to be considered. Additionally, the Housing Authority contends that there are significant differences between the duties of the customer care specialist and Clerk Typist positions and maintains that the title changes were designed to address the HUD mandate.

In response, the appellants state that there was no rational reason to lay them off as they had met the standards required for working in the new customer care specialist position. Specifically, they state that their written test scores were higher than the people who actually got hired in the job and they had satisfactorily performed the duties of a Senior Clerk Typist for years. Therefore, the appellants maintain that they are entitled to reinstatement, seniority, back pay, and benefits.

N.J.S.A. 11A:8-4 and *N.J.A.C. 4A:8-2.6(a)1* provide that good faith appeals may be filed based on a claim that the appointing authority laid off or demoted the employee in lieu of layoff for reasons other than economy, efficiency or other related reasons. When a local government has abolished a position, there is a presumption of good faith and the burden is on the employee to show bad faith and that the action taken was not for purposes of economy. *Greco v. Smith*, 40 *N.J. Super.* 182 (App. Div. 1956); *Schnipper v. North Bergen Township*, 13 *N.J. Super.* 11 (App. Div. 1951). As the Appellate Division further observed, “That there are considerations other than economy in the abolition of an office or position is of no consequence, *if, in fact, the office or position is unnecessary, and can be abolished without impairing departmental efficiency.*” *Schnipper, supra* at 15. (emphasis added). The question is not whether the plan or action actually achieved its purpose of saving money, but whether the motive in adopting a plan or action was to accomplish economies or instead to remove a public employee without following *N.J.A.C. 4A:8-1 et seq.* Thus, a good faith layoff exists if there is a logical or reasonable connection between the layoff decision and the personnel action challenged by an employee. Additionally, it is within an appointing authority’s discretion to decide how to achieve its economies. *See Greco, supra.*

Upon a review of this matter, the Commission finds nothing in the record to suggest that the layoffs were for reasons of economy or efficiency. The record clearly evidences that the layoff was *not* part of a plan to reduce payroll costs and the duties actually performed by the Senior Clerk Typist positions were substantially the same as those performed by the new customer care specialist

positions. In this regard, it cannot be ignored that the Housing Authority hired 22 customer care specialists and at least 10 occupancy specialists at the same time it eliminated employees with Civil Service status in the Clerk Typist title series. Moreover, the decentralization of functions performed by the Housing Authority's main office did not result in duties being assigned that were substantially different from those performed by incumbents in the Clerk Typist title series. Indeed, Murray, a current manager with the Housing Authority, indicated the substantial similarity between the functions of a Clerk Typist and the customer care specialists. It is irrelevant that the appellants either failed or did not participate in the selection process for the customer care specialist positions since there was no economic basis for the layoffs. Therefore, there is no evidence in the record that the layoffs were conducted for reasons of economy and efficiency.

Some additional matters warrant comment. If, after the appellants are restored to their positions, the Housing Authority needs to pursue a layoff action for reasons of economy and efficiency, it must file a new layoff plan with SLO. Additionally, a review of the appellants' CAMPS records does not indicate that they were laid off. Therefore, SLO should review the appellants' CAMPS records and make any corrections necessary to comply with this decision.

Since the layoffs have been reversed, the appellants are entitled to mitigated back pay, benefits, seniority and reasonable counsel fees pursuant to *N.J.A.C. 4A:2-1.5*.

This decision resolves the merits of the dispute between the parties concerning the layoff imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. February 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay and/or counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellants to their permanent positions.

ORDER

The Civil Service Commission finds that the appointing authority's actions in imposing layoffs were not justified. Therefore, the Commission reverses those actions and upholds the appeals of Anna Marie Clark, Eugene Sherman, Gwendolyn Bethea, and Sheila Everett. The Commission further orders that the appellants be granted back pay, benefits and seniority from the time of their improper layoffs to when they are reinstated. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-1.5* and *4A:2-2.10*. The Commission further awards reasonable counsel fees. Proof of income earned and an affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of

the appellant to the appointing authority within 30 days of issuance of this decision. The Commission directs that the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and/or counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to back pay and/or counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter should be pursued in the Superior Court of New Jersey, Appellate Division.